

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DAEMONTE SIMS,

Plaintiff,

v.

OPINION and ORDER

UNITED STATES OF AMERICA,
U.S. DEPARTMENT OF JUSTICE,
and FEDERAL BUREAU OF PRISONS,

24-cv-909-jdp

Defendants.

Plaintiff Daemonte Sims, proceeding without counsel, alleges that when he was incarcerated at the Federal Correctional Institution in Oxford, Wisconsin, medical staff negligently treated his knee injury. Sims filed this lawsuit in the United States District Court for the Northern District of Illinois; that court transferred the case to this court. Dkt. 12. Sims has made an initial partial payment of the filing fee as directed by this court.

The next step is for me to screen Sims's complaint and dismiss any portion that is legally frivolous or malicious, fails to state a claim upon which relief may be granted, or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. §§ 1915 and 1915A. In doing so, I must accept his allegations as true and construe the complaint generously, holding it to a less stringent standard than formal pleadings drafted by lawyers. *Arnett v. Webster*, 658 F.3d 742, 751 (7th Cir. 2011).

Sims's current allegations don't properly place the government on notice of his Federal Tort Claims Act claims against them, but I will give him a chance to file an amended complaint to better explain his claims.

ANALYSIS

Sims's allegations are very brief and contained on a Bureau of Prisons' internal small-claims form that he filed before this lawsuit. He states that he "was delayed physical therapy due to the negligence of the institution further risking my full recovery for [his] knee" and that Nurse Bell adjusted his knee brace without consulting the surgeon first, resulting in the surgeon attempting to re-adjust it. Dkt. 1, at 2.

Sims explicitly states that he wishes to bring a Federal Tort Claims Act (FTCA) claim against the government, and he names the United States, the Department of Justice, and the Bureau of Prisons as defendants. The United States is the proper defendant for Federal Tort Claims Act claims, so I will dismiss the other defendants from the case. *See* 28 U.S.C. § 2679(b)(1); *Jackson v. Kotter*, 541 F.3d 688, 693 (7th Cir. 2008).

The FTCA provides the exclusive remedy for certain individuals, including prisoners, to recover for damages caused by the negligent or wrongful act of a federal government employee. 28 U.S.C. §§ 2671–2680; *Levin v. United States*, 568 U.S. 503, 506–07 (2013). Because the relevant events occurred in Wisconsin, Wisconsin negligence law governs his FTCA claims. *See* 28 U.S.C. § 1346(b); *FDIC v. Meyer*, 510 U.S. 471, 477–78 (1994). Under Wisconsin law, a negligence claim includes the following four elements: (1) a breach of (2) a duty owed (3) that results in (4) harm to the plaintiff. *Paul v. Skemp*, 2001 WI 42, ¶ 17, 242 Wis. 507, 625 N.W.2d 860.

Sims's threadbare allegations are not enough to properly state a negligence claim. Federal Rule of Civil Procedure 8(a)(2) requires a complaint to include "a short and plain statement of the claim showing that the pleader is entitled to relief." The purpose of Rule 8 is fair notice, and thus a complaint "must be presented with intelligibility sufficient for a court

or opposing party to understand whether a valid claim is alleged and if so what it is.” *Vicom, Inc. v. Harbridge Merchant Servs., Inc.*, 20 F.3d 771, 775 (7th Cir. 1994). Sims’s allegations don’t give the government notice of what its employees did to harm him. Sims doesn’t explain what negligent actions caused a delay in his physical therapy, how long of a delay he faced, and how he was harmed by the delay. He does state that Nurse Bell adjusted his knee brace without consulting the surgeon, but he doesn’t explain how that adjustment harmed him or even how long his brace was adjusted incorrectly.

I will order Sims to submit an amended complaint fixing his pleading problems. In drafting his amended complaint, Sims should remember to describe simply and concisely what actions or inactions by government officials violated his rights, using separate, numbered paragraphs. Because it appears that Sims is no longer incarcerated, I will direct the clerk of court to send Sims a copy of the court’s non-prisoner complaint package.

ORDER

IT IS ORDERED that:

1. Plaintiff Daemonte Sims may have until April 10, 2025, to submit an amended complaint as directed in the opinion above.
2. Defendants Department of Justice and Bureau of Prisons are DISMISSED.
3. The clerk of court is directed to send plaintiff a copy of the court’s non-prisoner complaint package.

Entered March 19, 2025.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge